## AMENDMENTS TO THE CLAIMS

**This listing of claims will replace all prior versions and listings of claims in the application:**

## LISTING OF CLAIMS:

1. (currently amended): A positive active material for ~~the~~ a non-aqueous electrolyte secondary battery, comprising a lithium-nickel composite oxide represented by the compositional formula $Li_aNi_{1-b-c}Co_bMn_cO_2$ (in which the suffix a is not greater than 1.09, the suffix b is from not smaller than 0.05 to not greater than 0.35, and the suffix c is from not smaller than 0.15 to not greater than 0.35, and the sum of b and c is from not smaller than 0.25 to not greater than 0.55) having a hexagonal structure, wherein

when subjected to ~~the~~ X-ray diffractometry with ~~the~~ a CuKα ray, said lithium-nickel composite oxide exhibits an intensity ratio R ($(I_{012} + I_{006})/I_{101}$) of not greater than 0.50, R being the ratio of the sum of the diffraction peak intensity $I_{012}$ on the 012 plane and the diffraction peak intensity $I_{006}$ on the 006 plane to the diffraction peak intensity $I_{101}$ on the 101 plane.

2. (original): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 1, wherein said positive active material has a mean particle diameter $D_{50}$ of from 4 μm to 25 μm and a BET specific surface area of from 0.2 to 1.5 $m^2/g$.

3. (original): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 1, wherein said positive active material has a composition arranged such that b is from not smaller than 0.05 to not greater than 0.25 and c is from not smaller than 0.2 to not greater than 0.35.

4. (original): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 2, wherein said positive active material has a composition arranged such that b is from not smaller than 0.05 to not greater than 0.25 and c is from not smaller than 0.2 to not greater than 0.35.

5. (currently amended): A positive active material for ~~the~~ a non-aqueous electrolyte secondary battery, comprising a lithium-nickel composite oxide represented by the compositional formula ~~$Li_aNi_{1-b-c}Co_bMn_cM_dO_2$~~ $Li_aNi_{1-b-c-d}Co_bMn_cM_dO_2$ (in which M is at least one metal element selected from the group consisting of Al, Ti, W, Nb and Mo, the suffix a is not greater than 1.09, the suffix b is from not smaller than 0.05 to not greater than 0.35, the suffix c is from not smaller than 0.15 to not greater than 0.35, and the suffix d is from greater than 0 to not greater than 0.35, and the sum of b, c and d is from not smaller than 0.25 to not greater than 0.55) having a hexagonal structure, wherein

when subjected to ~~the~~ X-ray diffractometry with ~~the~~ a CuKα ray, said lithium-nickel composite oxide exhibits an intensity ratio R ($(I_{012} + I_{006})/I_{101}$) of not greater than 0.50, R being the ratio of the sum of the diffraction peak intensity $I_{012}$ on the 012 plane and the diffraction peak intensity $I_{006}$ on the 006 plane to the diffraction peak intensity $I_{101}$ on the 101 plane.

6. (currently amended): The positive active material for the non-aqueous electrolyte secondary battery according to Claim [[4]]5, wherein said positive active material has a mean particle diameter $D_{50}$ of from 4 μm to 25 μm and a BET specific surface area of from 0.2 to 1.5 $m^2/g$.

7. (original): A non-aqueous electrolyte secondary battery comprising a positive electrode comprising said positive active material defined in any one of Claims 1 to 6, a negative electrode comprising a carbon-based material, and a non-aqueous electrolyte.

8. (new): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 1, wherein said positive active material has a mean particle diameter $D_{50}$ of from 10.1 to 25 μm.

9. (new): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 1, wherein said positive active material has a BET specific surface area of from 0.37 to 0.69 $m^2/g$.

10. (new): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 8, wherein said positive active material has a BET specific surface area of from 0.37 to 0.69 $m^2/g$.

11. (new): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 8, wherein said positive active material has a mean particle diameter $D_{50}$ of from 11.5 to 25 μm.

12. (new): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 9, wherein said positive active material has a BET specific surface area of from 0.37 to 0.58 $m^2/g$.

13. (new): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 11, wherein said positive material has a BET specific surface area of from 0.37 to 0.58 $m^2/g$.

14. (new): The positive active material for the non-aqueous electrolyte secondary battery according to Claim 1, wherein said intensity ratio R $(I_{012} + I_{006})/I_{101}$ is not less than 0.422.